

SYSTEM AND METHOD FOR WHOLE COMPANY  
SECURITIZATION OF INTANGIBLE ASSETS

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This application claims priority of provisional applications Ser. No. 60/203,342 filed May 9, 2000, which prior provisional application is hereby incorporated by reference.

**FIELD OF THE INVENTION**

This invention relates generally to the field of computer-assisted business methods, specifically to data processing systems and methods for managing corporate assets. More particularly, the invention relates to computerized systems and methods for optimization of the use of intangible assets by means of corporate restructuring and securitization.

**BACKGROUND OF THE INVENTION**

Wealth and growth in today's economy are driven primarily by intangible business assets. Physical and financial assets are becoming commodities, and as such have limited potential to yield above-average returns on investment in the long run. By contrast, intangibles, in combination with other types of complementary assets, may ensure dominant competitive positions and above-average profits for sustained periods of time. In this application the terms intangibles, knowledge assets, and intellectual capital will be used interchangeably, as they essentially refer to nonphysical sources of value, i.e., claims to future benefits. Typically, when a claim to future benefits is legally protected, such as in the case of patents, trademarks, or copyrights, the asset is referred to as intellectual property.

A business entity generally has three basic asset components: working capital as represented by current assets less current liabilities, plant assets, and intangible assets. Broadly, these are the asset categories that all businesses use to participate in their respective industries and to generate profits. These assets are also the underlying basis for the value of a business, which is commonly expressed as the value of its equity and the value of its long-term debt. Thus, the sum of the equity and long-term debt values represents the basis by which all assets of a business were acquired, whether by purchase or internal creation. As noted, in today's economy intangibles are what primarily contributes to many business' earning power and thus to their value. The proper valuation of the intangible assets of a business entity is thus of critical importance. The valuation and funding of intangible assets and their interaction with other business assets are the focus of this application.

Three major types of intangibles may be distinguished according to the mechanism by which the assets are created. These include innovation, organizational structures and practices, and human resources. Successful innovation through research and development is the primary generator of enhanced value in many industries. Strong brand recognition and customer loyalty can also lead to substantial long-term profit advantages over less-known competitors. In many cases unique and creative organizational structures, and the ability to hire and retain the necessary human resources, are critical in creating the intangibles required to establish and keep a competitive advantage. As noted, intangible assets that exist under the protection of law are some times referred to as intellectual property, and include patents, trademarks, copyrights, industrial designs, trade secrets and know-how. Intangible assets may be also be created in the operation of the business. Examples of such assets include customer lists, distribution networks, regulatory compliance know-how, manufacturing practices, and others. Additional examples include assembled and well-trained workforce, advertising programs, training materials, customer loyalty, supplier contacts, management depth and experience, subscriber base and goodwill. This application focuses on intangibles that can be evaluated in terms of present or projected earnings.

In a successful business enterprise intangibles typically interact with tangible and financial assets to create extra value and economic growth. In particular, converting intangible assets into revenues, profits, and value requires a framework of integrated complementary business assets. It will be appreciated that a combination of all three business asset categories is required to make a product, package it, distribute it, sell it, collect payments, and implement many other business functions that are required for running a business. Many business entities utilize to some extent all business asset categories, but frequently are not good at managing them all efficiently. For example, because they are more difficult to evaluate, intangible assets may be overlooked in favor of fixed and working capital assets, the values of which can be readily ascertained. Clearly, in such cases these assets may not be utilized properly, leading to lower business valuation and other disadvantages.

Although some progress has been made in recent years, there is no established methodology for the valuation of intangible assets. In the prior art, some attempts have been made to evaluate intellectual property. Thus, for example, U.S. Pat. No. 6,154,725 discloses a computer system for use in evaluating patents or trademarks. U.S. Pat. No. 6,192,347 teaches decomposition of property into separately valued components in the context of real estate transactions. U.S. Pat. No. 6,154, 730 discloses a system for employing the projected receipts of a public facility, such as a stadium, to finance the

construction of the facility itself. None of these patents provide a mechanism for the evaluation of the intangible assets of a business entity coupled with a securitization of these assets, that can enhance the overall value of the business. The optimal deployment of the intangible and other business assets, however, requires accurate information about the individual assets, their valuation, and their most productive use in a particular business environment. The disclosure of these patents is hereby incorporated by reference.

Banks and other financial institutions have considered intangible assets, such as established brands, in the past as being important factors in assessing overall business credit. For example, it is known that strong brands produce low cash flow volatility; low volatility commands higher multiples if other factors remaining unchanged, which in turn results in higher lending values. Established brands are recognized as valuable assets creating a stable cash flow from the business owning the brand. The lending institutions may try to control valuable brands during the term of a loan by various methods, such as incorporating negative pledges in loan agreements and inclusion of the established brands in general security agreements. Where circumstances justify, banks may include identifiable intangible assets, such as trademarks, patents and brands, on the company's balance sheet as part of "net tangible worth" when stipulating debt. In some cases brands have been used as collateral, as in the RJR Nabisco leveraged buyout. Brand valuation is also occasionally built into borrowing covenants, such that it is considered an asset for borrowing purposes. However, the prior art fails to disclose whole company securitization of income derived from intellectual property or other intangible assets associated with a business.

Turning to the financing aspect of the invention, prior art methods of securitizing various types of cash flows include asset-backed securities (ABS), which are bonds or notes backed by certain assets. Typically these assets consist of receivables other than mortgage loans, such as credit card receivables, auto loans, manufactured-housing contracts and home-equity loans. In certain cases, however, market was created for asset-backed bonds backed by a music royalty. An example includes the bond issue backed by the future earnings of David Bowie's recordings made prior to 1990. In general, however, the prior art provided no mechanism by which intangible business assets can be evaluated and securitized, and in particular provides no mechanism for whole company securitization of income derived from intellectual property or other intangible assets associated with the business.

## SUMMARY OF THE INVENTION

In accordance with the present invention, a computer-based system and method are provided enabling business entities to issue debt at credit ratings one or more levels above those of the underlying assets, based on whole company securitization of income derived from intellectual property or other intangible assets associated with the business. Thus, one object of the present invention is to securitize the intangible assets, including the intellectual property of a business entity. Such assets may include trademarks, patents, licenses and income associated with various brands. In one aspect of the invention, it is desirable to achieve an investment grade, such as A, BBB or similar credit rating as a result of the securitization of the intangible assets of a business that may have a low credit rating. For example, underlying business debt rated B may be transformed in one aspect of the invention into investment-grade BBB debt by securitizing intangible assets of the business. Organizational restructuring into separate business entity is used in a preferred embodiment, which is expected to effectuate a substantial restructuring of the balance sheet and operations of the parent business.

In accordance with one embodiment, the following approach is used to securitize intangible assets of a business entity. Naturally, it is necessary that the parent business has intangible assets the value of which can be ascertained. As part of the corporate restructuring used in a preferred embodiment, a class of intangible assets of the business are isolated into a bankruptcy-remote entity. In various embodiments the separation of assets can be done through either contribution or sale. Thus, once the intangible assets of the business have been evaluated, the parent business is restructured into two separate entities. One of the resulting entities remains as the operating business, which may manufacture, distribute and sell products, and in general continues to operate in the framework of the original business. The second resulting entity owns the intangible assets of the parent business. It is a bankruptcy remote entity that may form an intellectual property managing company (Manager). The parent business and the Manager enter into agreements having the effect of completing a true market sale of the intangible assets of the parent. In a specific embodiment, backup management may optionally be provided, which is a standby entity that would administer the collateral, if there is a problem. In addition, in specific embodiments, one can present collateral exit scenarios, which guarantee the right to sell the intangible assets to other users.

In accordance with a present invention, securitizing intellectual property and other intangible assets is accomplished through the concept of controlled rights, which are effectuated through agreements. First, the Manager formed in the corporate restructuring

process must meet certain qualifying criteria to enhance the integrity of the transaction. IN a specific embodiment, the owner of the intangible assets then licenses the rights to use such assets back to the operating companies pursuant to an arms-length agreement. Thus, the organizational and operational change in the parent business removes certain intangible assets from the supply chain of the original business and licenses the rights to use these assets pursuant to an agreement. To this end, in accordance with the present invention, the intangible assets of the parent entity are evaluated in order to determine their market value. As explained in more detail below, cash flow models may be developed for different intangible assets. For example, regression analysis based on computer models of the brand can be used over a period of time to determine the current value of the projected revenues from the brand over the pre-determined period. It will be apparent that computer models of this type may take into account the lifecycle of various brands involved, the term of one or more patents owned by the business, and others. In this way, according to the invention, future income streams, which are to be derived from separated intangible assets, are quantified and may be sold or licensed to a separate entity.

In another aspect of the present invention a third-party lender assists in the securitization of the intangible assets of the business and provides financing (in the form of a loan) to a borrower, the entity that following the corporate reorganization owns the intangible assets. The proceeds of the loan are made available to the operating companies. The loan can be made for the purpose of refinancing existing indebtedness and providing incremental working capital for the parent business and for other general corporate purposes. In a preferred embodiment, the funding of the loan occurs simultaneously with its securitization. A servicer entity can be used to service the loan, as known in the art. Thus, in the case when the IP assets of the parent business have been underutilized (with reference to the corresponding working capital and plant assets) the structural reorganization done in accordance with the present invention may first enhance the overall value of the business by forcing the optimized use of each asset class.

In another aspect of the invention, a transaction waterfall is developed to back up the whole company securitization. In a preferred embodiment, a lockbox method is used where cash attributable to the intangible assets flows into a lockbox. The Manager then provides the portion of the income to the operating entity, which is reimbursed for the cost of its operations pursuant to the licensing agreement. In this way, in accordance with invention, the financial instrument is structured such that in effect it self – operates, which is different from the standard practice.

In a preferred embodiment, the ongoing servicing of the loan is performed using a computerized method to be used as a tool by a loan servicer on behalf of the lender. This implementation approach provides computerized means for estimating or inputting cash flows generated by the collateral license flow source (e.g., future revenues from the brand and profit margins), which are needed to obtain funds through securitization (e.g., borrowing the money and using the future cash flows as collateral); (2) making payments to the lender (or the participating investors) from the generated cash flows; (3) making payments on an ongoing, periodic basis to provide credit enhancement; and (4) adjusting cash flow estimates on a periodic basis to take into account discrepancies between actual and estimated cash flows.

In another aspect of the invention, the lender may turn the loan into marketable securities through securitization. For example, the lender may sell the loan to a trust. The trust may repackage the loan interest-bearing securities and actually issues them. The true sale of the loan provides bankruptcy remoteness, insulating the trust from the loan sponsor. In specific embodiments the securities that are sold to investors may be credit-enhanced with one or more forms of extra protection - whether internal, external or both.

In particular, in one aspect the invention is a computer-based method for managing the use of intangible assets of a business enterprise, comprising: a) providing a computer estimate of one or more sources of future cash flow expected to be generated by one or more intangible assets of the business enterprise; b) collecting and pooling rights to receive said cash flow(s) over a pre-determined time period; c) transferring said rights to at least one special purpose legal entity in a manner that effectively removes the respective cash flow(s) from the business enterprise's bankruptcy estate; d) granting by the special purpose entity of the rights to use said one or more intangible assets to an operating entity, in exchange for royalty payments, wherein the grant of rights comprises target performance and default provisions; and e) monitoring the operating entity for compliance with the grant of rights. In this aspect the computer estimate may be based on historical data related to the use of the intangible assets. As noted, the intangible assets may comprise a portfolio of one or more patents, trademarks or copyrights, or a business brand. In a preferred embodiment the method further comprises generating a computer model of revenues derived from the intangible assets and projected over the pre-determined time period in one or more geographic locations; comparing the generated computer model to historical data associated with the use of similar intangible assets and correcting the computer model based the comparison. In a specific embodiment, the method comprises the step of business restructuring designed to create the at least one special purpose legal entity, and at least one

operating entity. In another embodiment the method 1 further comprises the step of granting the rights to use said one or more intangible assets to a separate operating entity in the event of default, triggered in the step of monitoring. Further, the third-party lender providing the loan may issues securities using the pooled rights as collateral.

5 In another aspect, a computer based system for managing the use of intangible assets of a business enterprise is also provided in another aspect of the invention. Preferably, such system comprises means for predicting the likely dollar amount of the future cash flows and the inherent risks of amounts less than those cash flows being received and means for ensuring that investors in securities of the special purpose vehicle receive the maximum amount  
10 possible if cash flows are less than expected, and that they are insured or provided credit enhancement against such risk.

In another aspect, the invention is a method for making preparing documentation concerning a computed market-based valuation for at least one intangible asset of a business  
15 enterprise, the method including: directing a digital computer processor to manipulate electrical signals to prepare a document corresponding to at least one intangible asset of a business enterprise being separated from the assets of the business enterprise in accordance with terms in the document, and the document is made by steps comprising storing in an electronic memory electrical signals representing a computer valuation of future cash flow expected to be generated by said at least one intangible asset; storing in an electronic  
20 memory electrical signals representing the identity of a party being granted the exclusive rights to said at least one intangible asset; and printing the document at a printer device operably connected to the computer, wherein the document comprises at least two of the following: the identity of a legal entity designated to manage said at least one intangible asset to generate license revenues; the amount of license revenues to be generated from said  
25 at least one intangible asset over a pre-determined period of time; manufacturing and sourcing terms indicating obligations to manufacture and distribute products under a license to the rights of using said at least one intangible asset; and default provisions. Preferably, the method further comprises the steps of controlling the digital computer processor to manipulate electrical signals to prepare a second document corresponding to a financing  
30 agreement associated with the at least one intangible asset of the business enterprise, said second document comprising at least two of the following: the identity of a legal entity providing financing in exchange for a first priority lien on the at least one intangible asset; the terms of the financing agreement over a predetermined period of time projected in the future; and default provisions.

In yet another aspect, the invention is a computer-based method for optimizing the use of intangible assets associated with a third-party business enterprise by a lender, comprising: a) providing a computer estimate of the present value associated with at least one intangible asset of the third party; b) transferring assets corresponding to the provided computer estimate to a first special purpose legal entity in a manner that effectively removes the transferred assets from the lender's bankruptcy estate; c) effecting the transfer of rights in the at least one intangible asset of the third party to at least one third-party special purpose legal entity in a manner that effectively removes the asset from the third-party enterprise's bankruptcy estate; d) financing the third-party special purpose entity in exchange for a first priority lien on the at least one intangible asset; and e) establishing a transaction waterfall, wherein proceeds from licensing rights to the use of the at least one intangible asset are provided to the first special purpose legal entity. In a specific embodiment, the invention further comprises an article of manufacture comprising a computer storage medium storing therein computer program instructions, which when executed on a computer provide a computer estimate of one or more sources of future cash flow expected to be generated by the intangible assets of the third party.

In another aspect, the invention is a computer-based system for optimizing the use of intangible assets associated with a third-party business enterprise by a lender, the system comprising a computerized network of devices for: a) providing a computer estimate of the present value associated with at least one intangible asset of the third party, the estimate being based at least in part on information obtained over a telecommunications network from external information sources; b) transferring assets corresponding to the provided computer estimate to a first special purpose legal entity in a manner that effectively removes the transferred assets from the lender's bankruptcy estate; c) effecting the transfer of rights in the at least one intangible asset of the third party to at least one third-party special purpose legal entity in a manner that effectively removes the asset from the third-party enterprise's bankruptcy estate; d) financing the third-party special purpose entity in exchange for a first priority lien on the at least one intangible asset; and e) establishing a transaction waterfall, wherein proceeds from licensing rights to the use of the at least one intangible asset are provided to the first special purpose legal entity.



## **BRIEF DESCRIPTION OF THE DRAWINGS**

Various aspects, features and advantages of the instant invention are depicted in the accompanying set of figures, which is intended to be illustrative, rather than limiting, in which like reference numerals designate like elements, and:

Fig. 1 is a block diagram of an intellectual property valuation system that can be used in accordance with the present invention;

Fig. 2 illustrates in a block diagram form a simplified organizational structure of a business entity at the closing of re-organization, in accordance with the present invention;

Fig. 3 is a block diagram illustrating a complete transaction structure for whole company securitization of income derived from intangible assets property in accordance with a preferred embodiment of the present invention;

Fig. 4 is an illustration of a computer system for implementing computer processing in accordance with one embodiment of the present invention.

## **DETAILED DESCRIPTION OF THE PREFERRED EMBODIMENTS**

### **I. Evaluation of Intangible Assets**

In general, buyers of assets which are intellectual property intensive purchase these assets based upon some estimated value. When a creditor is considering advancing funds based upon the value of fixed assets, such as equipment, an appraisal is performed and a liquidation value is determined. Then a liquidity adjustment is considered and a liquidation value is concluded. Similar valuation approaches can be employed to determine the liquidation value of intellectual property. It is known to value intellectual property assets with respect to various accounting procedures which conform to Generally Accepted Accounting Procedures (GAAP). There are typically three such procedures: cost, market and income approaches. The valuation approaches are generally known in the art and need not be considered in detail. The reader is directed to the disclosure of U.S. Pat. No. 6,154,725, which is incorporated by reference, for useful background.

In part, these accepted accounting methods rely on the availability of sufficient data relating to the intellectual property portfolio itself. Thus, if the owner of an intellectual property portfolio has used and marketed this property over a sufficiently long time period, then suitable data may be collected to formulate a price based upon one of the above accounting valuation techniques. However, these techniques typically do not provide reliable valuation results when the owner has not collected data or has not used or marketed the portfolio long enough to obtain such data.

Fig. 1 is a block diagram of an intellectual property valuation system that can be used in accordance with the present invention. In particular, data input device 2 can be used to input data representing the intellectual property portfolio to be evaluated. This data may be, for example, a list of patent numbers and/or trademark registrations, or preferably may include additional information. For example, the additional information may include financial information regarding the business owning the property, or recent performance in the stock market. Data input device 2 is a standard input device and need not be considered in detail. Data entered in device 2 is transmitted to database access device 4.

Device 4 filters the received data to determine which aspects of the received data are to be further analyzed by retrieving information regarding the data from various on-line databases, which aspects need to be transmitted to data processor 6. Device 4 has access to various databases 14 having information concerning the data to be analyzed. For example, with respect to the patent number information, device 4 may access a database to determine if a patent is currently involved in a litigation using such databases as the LITALERT

Database, or whether the patent is under reexamination or reissue using databases that provide information regarding the legal status of a patent. Device 4 could further access the LEXIS/NEXIS database to determine whether any newspapers have published any current information regarding the patents, as well as determining whether the patent has been involved in previous lawsuits by accessing the legal reporter files.

Finally, device 4 can also access a full-text patent database to collect different types of information, which could be of two forms. The first type is information derived directly from the patents, such as the number of claims, the length of the independent claims, number of references cited, number of classes searched, whether the patent is a reissue or reexamination, number of years until patent expires or in which group the patent was examined and others. In addition, the indicators may include whether the inventor(s) is a U.S. or foreign citizen, or whether the current owner is U.S. or foreign based. Information regarding U.S. or foreign priority, and whether the cited references have publication dates near the priority dates could also be considered.

The second type of information may be derived from other patents. For example, this information might be how often the patent being evaluated has been cited as a reference for other patents. Similar information could also be collected for trademarks which are included in the intellectual property portfolio from such databases as DIALOG's FEDERAL TRADEMARK SCAN and STATE TRADEMARK SCAN, which store information regarding federal and state trademarks, respectively. Based upon these databases, a user might, for example, determine whether a trademark includes disclaimers to certain words in the trademark and/or how many classes the trademark has been issued for or covers. In addition, recent information affecting the trademark, using services such as LEXIS/NEXIS could be used. Finally, intellectual property which also includes copyrighted work could also be considered in a similar manner. For example, computer software related intellectual property might include both patents on the computer system, as well as copyrights on the software itself.

Device 4 may be any standard device which may interface with the various other databases using, for example, software which is compatible with the software systems of the various databases.

The collected information, including, for example, the first and second types of patent information discussed above, are then transmitted to data processor 6 to process the collected data. The data which does not require processing in data processor 6 may be simply passed to indicator weighing device 8. Data processor 6 processes the collected data as follows: For each of the above indicators, data processor 6 would assign an importance

factor, based upon predetermined data stored in empirical database 12, for each of the indicators indicating the importance of the collected data with respect to each indicator. Data processor 6 may include any standard data processor manufactured by various companies including Intel, and preferably may include various functions of artificial intelligence.

Empirical database 12 may be a single database storing all the required empirical data, or may be comprised of several smaller databases each storing different required data used by the system. Empirical database may be any standard database. For example, if device 4 searches the DIALOG database and collects information that a specific patent has been cited over a 100 times, i.e., a citation indicator, data processor 6 might assign an importance factor of 10 on a scale of 1 to 10 to the citation indicator. Similarly, if device 4 determines that the patent was searched in only one class for the class indicator, data processor 6 might assign a 1 on a scale of 1 to 10 to the class indicator. Initially, the class and citation indicators may have the same relative importance. Data processor 6 may determine the values for the citation indicator and for the class factor by comparing the indicators to predetermined indicators having predetermined values. These predetermined indicators may be based upon collected indicators from known intellectual property portfolios.

The determined worth indicators are then transmitted to an indicator weighing device 8, which prioritizes each of the indicators against each other based upon predetermined weighing schemes, which have been determined from known portfolios by also consulting empirical database 12. For example, the citation indicator may be more important, for example twice as important, than the class indicator based upon prior experience.

The weighted indicators are transmitted to indicator comparing device 10, which compares the collection of worth indicators to collections of worth indicators from known intellectual property portfolios by consulting database 12 storing the empirical data. Known distribution or estimation techniques could be used to determine the closest matching known intellectual property portfolio to the intellectual property portfolio which is to be evaluated. Finally, the system may output an approximate value of the evaluated portfolio based on comparison with known or previously estimated portfolio values. The output may be displayed on any display, such as the display systems for electronic data processing equipment.

In a specific embodiment, the present invention may also utilize comparison techniques using neural network pattern matching processes. The specific types of pattern

matching techniques implemented by the comparison system/device can be the standard Kohonan and the Back Propagation neural networks, see, for example, U.S. Pat. Nos. 5,146,541 and 5,303,330, incorporated herein by reference. However, other pattern matching techniques could also be used, depending on the required application. In each type of comparison, a neural network is selected that is suitable to the requirements of the application.

In accordance with the present invention, the evaluation of brands is done by establishing the history of the use for the brand, and the level of brand name recognition due to its reputation. Assuming that the underlying business is making apparel and accessories, one useful tool in evaluating the strength of the brand may be the Fairchild 100 Consumer Survey that ranks the most recognizable brands in apparel and accessories. High ranking in such surveys along with the time period during which the brand has maintained its ranking is an important indicator of the strength of the brand name and its inherent value to the business. For companies in relatively bad fiscal condition, having falling sales and decreased marketing, maintenance of rank position speaks directly to the strength of their brands. Appendix A provides an example of Collateral analysis of the Converse brand in apparel and accessories. The appendix includes an overview of the company's licensing operations, trademarks, historical summary of licenses, including royalty income, broken down by regions and licensees. As a result of this analysis, accurate projections can be made as to the earning's potential of the brand over a period of time. The results of this analysis are essential in the process of securitizing the intangible assets of the parent business, since all computations are based on the projected revenue streams.

## **II. Transaction Structure**

### **A. Corporate Re-structuring**

Figure 2 illustrates in a block diagram form a simplified organizational structure at the closing, used in accordance with the present invention in the case of a single business entity having intangible assets to be securitized. For simplicity, in the following description the term Intellectual Property or "IP" will be used to define the collateral, but it should be understood that unless stated otherwise such IP may also contain intangible assets of the company that do not fall within the standard definition of intellectual property.

Shown in Fig. 2 at 100 is the parent business entity XYZ, which may be a publicly traded company owned by its shareholders. In accordance with the present invention the XYZ parent company is re-structured into one or more "Operating Companies" 110, which may include all current operating subsidiaries. As described below, operating company(s)

110 license the business entity's brand and any other IP, and produce and distribute all products of the parent company XYZ.

In addition, the parent company forms in accordance with the invention a subsidiary "Manager" entity 120. Manager 120 manages the IP assets that are being securitized. In a specific embodiment, the Manager may be a newly created subsidiary of XYZ company, for example structured as LLC. Preferably, it is qualified and must maintain special purpose entity (SPE) status. Manager 120 in a preferred embodiment has all of the assets (including all current, future and renewal IP assets) and personnel necessary for the exploitation of the intangible assets of the parent XYZ. Preferably, the intangible assets are contributed to Manager 120 at or prior to closing through, for example, a capital contribution agreement. By means of the restructuring, IP assets of XYZ are insulated from the negative impact of production operations and market cycles.

In accordance with the invention, the IP assets being securitized are sold to a "Borrower" entity 130 in a true sale for securitization purposes. Borrower 130 in a specific embodiment is a newly created LLC subsidiary of Manager 120. Preferably, it must also qualify and maintain SPE status. As noted, the Borrower 130 has all current IP assets sold to it by the Manager 120. In a preferred embodiment all future and renewal IP assets are sold to the Borrower through, for example, a management agreement. In a specific embodiment, compensation for the future assets may be included and accounted for in, for example, excess Management Fees, as described below. As explained next, consideration for the sale of the IP assets is provided in a preferred embodiment by loan proceeds and may include an equity stake in the Borrower. In a preferred embodiment, Manager 120 may enter into a management agreement with the Borrower 130 to exploit the IP on behalf of the Borrower, in exchange for a Management Fee. In the case when consideration is obtained using a loan, Manager 120 may retain a portion of the loan proceeds (obtained through the sale of the Collateral to the Borrower) for the initial capitalization of the Manager.

With reference to Fig. 2, in accordance with the invention the Operating Companies 110 enter into a market-rate master license agreement with the Borrower 130, so that the Operating Companies 110 may continue to utilize the IP of the parent and may operate on a going-forward basis in a manner consistent with the normal production operations of the parent entity XYZ. Preferably, the Operating Companies 110 can enter into a non-exclusive, market rate manufacturing and sourcing agreement with the Borrower, such that the Operating Companies may continue to fulfill any distribution obligations of the parent company XYZ, under certain license agreements, of the Borrower on a going-forward basis

in a manner consistent with standard operations by the parent XYZ. All transactions indicated above are at arms-length.

In summary, through the creation of a Manager 120, in one embodiment a newly created operating subsidiary of the parent XYZ entity, the Operating Companies will become a third-party IP licensee (under a Master License Agreement), manufacturing and distributing products within the United States and supplying product to certain international markets. Preferably, under the terms of the Master License Agreement, XYZ will be subject to customary terms, including the payment of royalties to the Borrower and maintaining certain performance criteria in a manner consistent with a license of this nature. The Master License may be part of the loan collateral, as explained below. Consistent with the terms in XYZ's existing licenses with third parties, the Master License Agreement may require that the Operating Companies maintain a standard of performance and fiscal strength. Should any material terms of the license be broken, the Manager 120, may have the right and in certain instances may be required to terminate the Master License Agreement on behalf of the Borrower.

In accordance with the corporate re-structuring, Manager 120 will be required, in return for Administration Fees, to manage and exploit the IP on a best efforts basis. As explained in more detail with reference to Fig. 3, should the Manager not perform its duties as required, or if the Manager cannot maintain its status as a Qualified Manager, the Lender may have the right to terminate the Manager and install a Back-up Manager. The Back-up Manager will, in return for a pre-determined fee, continue to administer the IP, while pursuing alternative forms of exploitation that will protect and enhance the cash flow of the Borrower. The options available (the Exploitation Rights) may include, without limitation, the negotiation of a Retail Put Contract, the identification of a replacement Qualified Manager and/or Qualified Master Licensee and ultimately, upon default, the immediate liquidation of the collateral.

## **B. Overview of the Collateral**

As indicated above, the collateral for the purposes of the loan transaction consists of trademarks, patents and all existing, renewal and future licenses of XYZ, as well as all income generated by such license collateral (collectively "the Collateral IP").

Although the nature and scope of the Collateral IP involved in a particular transaction will vary, an example will serve as an illustration. Assume that XYZ company has entered into several separate licensing agreements permitting the licensees to make, use and sale patented machines, processes and/or products, and further design and market

selected products under the XYZ brand name in specific markets. Under the standard terms of such licensee arrangements, products designed by licensees, as well as related advertising, must be approved in advance by XYZ. In addition, in most cases XYZ has the right to monitor the quality of the licensed products on an ongoing basis. The valuation of the Collateral IP is done in accordance with the principles discussed in Section I above.

The collateral licenses represent the obligation of the licensees to pay royalties to XYZ on the products manufactured and sold by the licensees. Royalties are typically paid quarterly, in arrears based upon a percentage of net sales, with most licenses providing for minimum royalties (typically based upon minimum sales requirements). The licenses are typically three-to-five years in length and may include renewal options based upon the licensee meeting prior performance criteria. In addition, although royalty payments are typically made in U.S. dollars, XYZ may forward foreign exchange contracts to hedge significant net currency exposure.

#### **C. Structure of the Loan**

In accordance with a preferred embodiment, the essential terms of the Loan include:

(a) Borrower 130 is the acquirer of the XYZ Brand; (b) the loan amount depends on the Collateral IP owned by the parent XYZ, but for purposes of illustration can be assumed \$85 million; (c) the Loan Term in a specific embodiment is for 20 year Legal / 10-year expected, or some other terms as the parties may agree on; (d) the Collateral IP includes perfected security interest in all of the patents, trademarks, licenses and associated Income related to the XYZ Brand; (e) license income (deposited in Lock-box) is derived from domestic and international third-party licensing operating companies. In a preferred embodiment, the loan to value ratio is less than 40%, although other ratios can be used in specific embodiments.

In one aspect, initial ratings issues to be addressed in the process of securitization include the true sale of the Collateral IP Assets, accomplished through the agreements described above. In this way, there is minimum or no risk of fraudulent conveyance problems, which is an important tax treatment consideration. Further, there is no bankruptcy risk in Manager or Borrower, as both entities are bankruptcy remote, and there is no operating or manufacturing risk in Manager or Borrower, since neither of them is involved in the manufacturing and/or distribution process. It will be apparent that the described structure guarantees ease of transferability of the IP Assets to a Back-Up Manager in the event of a trigger event or any other Manager Default, which can be specified with particularity in the loan agreements.



From an economic viewpoint, an important issue to consider in the process of whole company securitization is the ratings analysis. It will be appreciated that individual items in the analysis can change, and therefore the following is merely an illustration of the general principles of the invention. First, in accordance with the invention it is preferable to have relatively a low Loan-to-Value ratio, in a specific embodiment under 40%. Second, it is also preferable to apply over-collateralization, which in a specific embodiment may require a 10% liquidity reserve. It will be appreciated that over-collateralization helps mitigate seasonality risks and enhances the Collateral IP. Third, in accordance with a preferred embodiment a high debt service coverage ratio (gross margin divided by total debt service) should be used. Further, there is a low re-marketing risk because of the inherently high value of the collateral and the protection mechanisms implicit in the value ranges specified above. Also important is the use, in a preferred embodiment, of a qualified Back-Up Manager in a standby position. As noted, pursuant to the loan agreement the Lender preferably also may receive the right, in the event of a Manager Trigger Event or Manager Default, to sell a Master License to a mass-market retailer or another entity that is better capable than the Operating Companies 110 to perform under the prevailing economic conditions.

#### **D. The Loan Transaction**

Figure B is a block diagram illustrating a complete transaction structure for whole company securitization of income derived from intellectual property in accordance with a preferred embodiment of the present invention. Figure B illustrates in further detail the structural relationship shown at closing in Fig. 2, where for simplicity the parent XYZ and the Operating Companies are shown in one block 100, and further illustrates the interconnection between different entities and the exchange mechanisms used in a preferred embodiment. In particular, agreements between various parties are indicated with dotted lines, while exchange of securities, cash and loan proceeds are shown in solid lines.

As shown in Fig. 3, in a preferred embodiment parent business entity XYZ may be a publicly traded company having established intellectual property and other intangible assets, designated as Collateral IP. In accordance with the invention, XYZ assigns and transfers all such Collateral IP and all related licensing assets, offices and personnel (collectively designated as transaction 111) to Manager 120, which is a licensing subsidiary of XYZ. Preferably, Borrower 130 is a special-purpose, bankruptcy-remote entity of the Manager. As indicated, the Manager 120 and the Borrower 130 enter into a Management Agreement 112. Pursuant to this agreement, the Manager 120 sells (114) Collateral IP

assets, such as patents, trademarks, licenses and income rights to Borrower 130. In return, in the illustrated embodiment the Manager receives from the Borrower loan proceeds 116, and passes net loan proceeds to the Operating Companies 100. As further illustrated in the figure, the Borrower 130 enters into a Master License Agreement 115 with the Operating Companies 110 granting it a non-exclusive license to manufacture, distribute and sell products under the Collateral IP. A separate Manufacturing and Sourcing Agreement 117 between the parties regulates the obligation of the Operating Companies with respect to the use of the Collateral IP.

At 200, 210 and 220 Fig. 3 illustrates three entities, designated Credit Corporation, Servicer and Lender, respectively. As shown, for the purposes of a restructuring transaction, in a specific embodiment a credit company 200 can form a servicing corporation "Servicer" 210, that performs loan servicing for a separate business entity, "Lender" 220, which in a specific embodiment is owned by the Credit Corporation 200. Lender 220 preferably is a special-purpose, bankruptcy-remote subsidiary of the Credit Corporation 200. In a preferred embodiment, the valuation of the intangible assets of the parent company is done by or on behalf of the Credit Corporation 200.

In accordance with the invention, subject to various conditions described in more detail below, the Lender 220 provides financing (the "Loan") to the Borrower 130, the net proceeds of which will be made available to the Operating Companies 100 (in consideration of the sale or contribution of the Loan Collateral by XYZ to the Borrower). The Loan is generally made for the purpose of refinancing existing indebtedness and providing incremental working capital for the XYZ company and for other general corporate purposes of the Company. In a preferred embodiment, the funding of the Loan occurs simultaneously with the securitization of the Loan unless the Company requests and accepts a loan commitment from Lender prior to Securitization.

It will be appreciated that the corporate restructuring illustrated in Figs. A and B preferably is used in the cases when intangible assets of the parent corporation are underutilized by the parent company 100 for various reasons, including weak market conditions. As a result, typically parent company 100 is not profitable, or is losing money. In such cases, the loan agreement may stipulate that management of the Operating Companies should develop a strategy and restructuring plan satisfactory to Lender 220. The plan may detail the process through which the Company 100 intends to improve its balance sheet and turn the manufacturing operations profitable within a specific restructuring period.

In a specific example used for illustration purposes only, the loan is in the amount of \$85 million, subject to Rating, Securitization and Cash Flow Verification. The loan term

may be 20 years (legal), 10 years (expected). It is secured by a first priority, perfected pledge and security interest in all of the assets of the Borrower 130, (which is a special purpose entity), which preferably includes: (i) all patents, trademarks and all existing, renewal and future licenses of the Company (the "License Collateral"); and (ii) all related existing, renewal and future license income generated by such License Collateral (the "License Income", License Collateral and License Income collectively, the "Collateral IP"). The loan structuring fee is an amount agreed upon by the parties, and in a specific embodiments may be 4% of the loan amount.

*Principal and Interest Payments* In accordance with the invention, the Loan is fully amortizing over the Loan Term and may be subject to a cash flow sweep as described below in the Accelerated Principal Account subsection. Generally, the principal payments and interest accrued on the Loan may be payable quarterly. All Loan payments including principal, interest, Accelerated Principal and reserve payments are preferably made in US dollars.

*Loan Interest Rate* in accordance with a specific embodiment, the interest on the Loan accrues at the applicable Interest Rate and is payable on each quarterly interest payment date and on the Final Maturity date, calculated for the actual number of days elapsed on a 360-day year basis. In a specific embodiment, the interest rate may be a fixed rate determined as of the business day prior to Loan closing. Determination of the interest rate generally considers certain cost components including, but not limited to; (i) the cost of the Coupon, (ii) the cost of credit enhancement and (iii) the Loan servicing costs. In a preferred embodiment, the system of the present invention calculates and distributes to the parties a projected interest rate range schedule.

*Liquidity Reserve* In an important aspect of the invention, upon closing of the Loan, the Borrower 130 is required to fund a Liquidity Reserve in a fixed amount, preferably equal to at least 10% of the Loan Amount, or in the specific example discussed above - approximately \$8.5 million. In the event that the Liquidity Reserve is utilized to make a debt service payment to the Lender 220, future excess License Income will be used to replenish the Liquidity Reserve to its required level. Preferably, in order to maintain the high rating of Collateral IP bonds, the Liquidity Reserve should be maintained with more than two times the initial quarterly Debt Service plus Minimum Accelerated Principal payment. Liquidity Reserve funds are to be invested in permitted investments to increase the Liquidity Reserve balance. Upon full payment of the Loan, all outstanding amounts in the Liquidity Reserve are released to the Borrower. If the balance in the Liquidity Reserve

is equal to or more than the principal balance of the Loan, at any time, the Liquidity Reserve may be used to defease the Loan.

*Accelerated Principal Account* As noted, an Accelerated Principal account held in the name of Lender 220 is used in a preferred embodiment, and is utilized to accumulate funds from the cash flow generated from the License Collateral for quarterly application to payment of Loan principal. In particular, at closing, minimum Accelerated Principal payments are calculated, such that the Loan is paid in full by the target maturity date, for example, 10 years from closing.

Non-payment of a minimum Accelerated Principal payment does not constitute an event of default, but in a specific embodiment the Manager's administration fees can be made subordinate to the minimum Accelerated Principal payments. Minimum Accelerated Principal payment short falls for any scheduled period thus carry over to the scheduled minimum Accelerated Principal amount(s) for the subsequent payment period(s).

In a specific embodiment, the Lender may also limit the Accelerated Principal payments to a given percent of the Loan, such as for example 9.5% of the original Loan balance. In this embodiment it is ensured that the average life of the loan is no less than five years, as calculated on each payment date. It will be appreciated that the minimum and maximum Accelerated Principal payments are features which are not required for the restructuring of the parent, and thus are optional features.

In a preferred embodiment, the Credit Corporation may engage legal counsel for both Lender 220 and investor(s) 500, valuation companies, ratings agencies and industry experts on behalf of the XYZ company.

In a preferred embodiment, the Loan amount preferably should not exceed 75% of the asset valuation of the License Collateral (the "Maximum Valuation") as determined by the Lender. In addition, as it relates to debt service on the Loan, the loan debt service coverage ratio (calculated as Gross Margin divided by Debt Service, the "Loan DSCR") may be 1.30:1.00 (the "Minimum DSCR") or greater based in part on the underwritable cash flow generated by the License Collateral. Underwritable cash flow is defined, for licensing assets, as Gross Margin, which is equal to gross royalty revenues less international tax withholdings, as determined by the Lender and the greater of the Loan Interest Rate constant which will be determined at Rate Lock or some predetermined percent, such as 12%.

*Cash Flow Verification* For the purpose of the Cash Flow Verification Requirement and all relevant covenant calculations relating to the Loan, debt service (the "Debt Service") is defined as the aggregate cash payments for all scheduled principal (based on dynamic 20-

year amortization table, meaning that the required principal payment is recalculated each payment date based upon current principal balance and the time remaining until legal maturity) and interest payments.

In a specific embodiment, for the first twelve months of the Loan, a pro forma twelve month rolling average may be used. At closing, Borrower must demonstrate, to Lender's satisfaction, that the License Collateral generates an average minimum Gross Margin available for Debt Service Payments of a pre-specified annual amount and a second amount annually projected for the term of the Loan, after adjustments for the Lender's underwriting criteria.

*Collateral Maintenance:* If the Collateral debt service coverage ratio (calculated as Gross Margin divided by Debt Service during the first 30 months of the transaction, and as Gross Margin divided by Debt Service plus Minimum Accelerated Principal payments thereafter, the "Collateral DSCR") generated by the License Collateral falls below 1.10:1.00, the License Collateral will be subject to placement with a Back-up Manager, as outlined below, in order to improve the administration and exploitation of the License Collateral (the "Trigger Date").

If at any time during the Loan Term, the Loan has a Loan DSCR below 1.00:1.00 (the "Default Date"), the Loan may be subject to (i) an amortization event (full cash sweep to principal amortization), (ii) placement with a Back-up Manager 320, and (iii) an immediate liquidation by the Back-up Manager 320, as outlined below under "Remedies".

For purposes of this provision, the DSCR is determined on a twelve month rolling average basis. For the first twelve months of the Loan, a pro forma twelve month rolling average may be used.

*Management Agreement and Management Qualifications* 112. In accordance with the present invention the Manager 120 enters into a Management Agreement with the Borrower 130 and Lender 220 to administer and exploit the Collateral IP on a best efforts basis. As compensation, under such Management Agreement the Manager is paid a nominal quarterly administration fee, plus an excess administration fee, which may be structured as follows: (i) during the first 30 months of the Loan, an aggregate amount of no more than 12.5% of gross revenue, payable from Gross Margin and (ii) beginning after the 30<sup>th</sup> month (to coincide with the Company's first royalty payment due under the Master License), the first \$X in Gross Margin over \$Z million per year plus an aggregate amount of no more than 12.5% of gross revenue, payable from Gross Margin in excess of \$W million, and as defined in the Transaction Documents.

The Management Agreement must be drafted on market terms and conditions, and it has to define the qualifications necessary for the manager of the License Collateral (the "Qualified Manager"). Such qualifications in general include: (i) having positive consolidated Net Income from continuing operations; (ii) having positive consolidated Net Worth; (iii) no Debts other than those entered in the ordinary course of business; (iv) maintaining SPE status; and (v) any other market-rate qualifications, as Lender may deem necessary.

For the qualification of (i) above, consolidated Net Income from continuing operations means, for any period, the consolidated net income (or loss) from continuing operations of the Manager and its consolidated subsidiaries for such period, excluding gains or losses from dispositions of assets, any extraordinary items, and other non-recurring items not related to operations.

To ensure that the Manager maintains its Qualified Manager status, at closing, and on a quarterly, going-forward basis, the Manager's accountant may be required to issue a statement to the Lender qualifying the Manager with respect to its designation as a Qualified Manager. The Lender, shall reasonably allow for certain waivers and exceptions to the Qualified Manager requirements through the Loan Term.

The Management Agreement is pledged as additional collateral for the Loan, and Credit Corporation 200 will have a first priority perfected security interest in the rights under the Management Agreement. Upon the occurrence of an event of default, Credit Corporation 200 may have the right to terminate the Management Agreement.

*Master License* As noted above, the Company 100 enters into a Master License Agreement with the Borrower on market terms. The Master License Agreement will grant the Company the right to manufacture and distribute products, as the Company does prior to the restructuring through its ordinary course of business.

In a preferred embodiment, the Master License Agreement is royalty free for 30-months and is self-renewing into perpetuity, subject to certain retail sales performance criteria to be negotiated between the parties. After the first 30 months, the Master License may call for a Net Royalty Rate of, for example, 0.5% of Net Sales. The Net Royalty may be calculated from a gross royalty rate, less consideration for continued, minimum advertising and research & development expenditures made by the Company in support of its Collateral IP, in addition to a credit for past expenditures, made throughout its prior operating history, to develop and support the Collateral IP, including any long-term brand name support.

In the event that the Master License is terminated, to ensure that there is minimal disruption and erosion in the value of the Company's collateral, the Master License may contain standard provisions allowing for an adequate period of time for orderly liquidation of the inventory collateral. The Manager 120 or Back-up Manager 320, as the case may be, can make a reasonable attempt to include the advance purchase of such inventory in the agreement(s) executed by successor licensee(s) or retailer(s).

In a preferred embodiment, the Master License is included in the License Collateral. As such, the royalty is subject to the Transaction Waterfall, and should (if all other Licensing Income is sufficient cover required payments in the waterfall) return to the Manager 120 in the form of the Administration Fee and Excess Administration Fees.

The Master License Agreement of the invention should be drafted on market terms and conditions, and has to define the qualifications necessary for a master licensee. In the case of trademark licensees, for example, such qualifications may include: (i) having positive Consolidated Net Income from continuing operations before extraordinary items; (ii) having no monetary events of default on all material debts; (iii) maintaining solvency and not filing any voluntary bankruptcy or permitting continuation of any involuntary bankruptcy; and (iv) any other market-rate qualifications, as Lender deems necessary. The Master License Agreement may provide standard and reasonable cure rights acceptable to the Licensee.

For qualification (i) above, Consolidated Net Income from continuing operations means, for any period, the consolidated net income (or loss) from continuing operations of the parent Company and its consolidated Subsidiaries for such period, excluding (a) gains or losses from dispositions of assets, (b) deferred tax valuation credit or expense, (c) any extraordinary items, (d) non-cash (paid in kind) dividends from qualified preferred stock offerings (i.e., having a maturity beyond the Target Maturity); and (e) other non-recurring items not related to operations; and Subsidiaries shall be defined to include all subsidiaries of the Company consolidated for tax purposes and which are subject to the BTCC credit facility.

To ensure that the Company maintains its Qualified Master Licensee status, at closing, and on a quarterly, going-forward basis, the Master Licensee's accountant shall be required to issue a statement to the Manager qualifying the Master Licensee with respect to its designation as a Qualified Master Licensee. For the purposes of determining the Qualified Master Licensee status of the Company, the Company must fail to comply with item (a) above for two consecutive Test Dates. The Lender may allow for certain waivers and exceptions to the Qualified Master Licensee requirements through the Loan Term. The

Lender may also agree to waive the qualifications for the first 30 months of the transaction, so long as the Company can demonstrate at closing sufficient operating liquidity, to cover operating losses through this period. After the first 30 months, the Master Licensee's accountant may be asked to confirm Master Licensee's qualifications based upon a predetermined schedule.

*Manufacturing & Sourcing Agreement* As shown in Fig. 3, the Borrower 130 enters into a Manufacturing & Sourcing Agreement with the Company on market terms. The Manufacturing & Sourcing Agreement will grant the Company the non-exclusive right, and impose upon the Company the obligation, to fulfill the product distribution components under licensing agreements which are denominated "Manufacturing, Distribution & License Agreements" and which provide for the distribution to the licensees of products manufactured or otherwise sourced by the Company.

*Back-up Manager* In accordance with a preferred embodiment, a Back-up manager 320 can be used to take over the management of the Collateral IP when needed. For this purposes, the Borrower 130 and the Lender 220 may enter into a Back-up Manager Agreement with a qualified Back-up Manager typically selected by Lender. The terms and conditions of such agreement are be customary for the transaction and may include a full indemnification of the Back-up Manager by the Company, the Manager and the Borrower. Upon replacement of the Manager, the Back-up Manager will be responsible for overseeing existing licenses and sub-licenses through maturity and negotiating new licenses, renewals and the Retail Put Contract, as described below.

*Retail Put Contract* Upon the termination of the Manager, the Lender may have the right to put a master license to one or more companies that are in the same line of business as the Operating Companies, under the advice of the Back-up Manager. The Retail Put Contract allows for the master licensor to assume all existing sub-licenses (including, without limitation, the Master License in favor of the Company) upon maturity/cancellation. Upon full repayment of the Loan all rights of the Manager, will revert back to the Manager.

*Rating* In accordance with a preferred embodiment, a rating of the transaction for the Loan of "BBB" or better from Fitch IBCA and equivalent from Moody's Investors Service, without regard to any credit enhancements, is expected.

*Securitization* Simultaneous with the closing of the Loan, in a preferred embodiment, the Lender will securitize the Loan as a Single Loan Transaction through a Trust structure. The Trust certificates (the "Certificates") will be secured in whole by all rights and security granted by the Loan with relation to the License Collateral. The Borrower has to cooperate with the Lender to facilitate the rating and securitization of the



Loan and agrees to provide Lender with opinions from its counsel and indemnifications that are customary in such transactions. The Lender may reserves the right to tranche the Certificates into multiple classes, with distinct coupons and terms. Such coupons and terms may be structured at the Lender's discretion within the parameters dictated by the Loan

5 Documents.

*Credit Enhancement:* The Lender reserves the right to request proposals from banks, monoline insurance companies or equivalents, to provide a credit enhancement for the transaction. In the event of Debt Defeasance, as allowed below, Borrower will be responsible for any related make-whole payments. Credit enhancement occurs when a security's credit quality is raised above that of the sponsor's unsecured debt or that of the underlying asset pool. Internal and/or external credit supports may thus be employed to increase the likelihood that investors will receive the cash flows to which they are entitled.

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*Prepayment Premium* Prepayment of the Loan is permitted at any time during the Loan Term subject to yield maintenance, discounted at 3-month LIBOR as of the closing date of the Loan, up to the Target Maturity date; thereafter the Loan may be prepaid without penalty. In the event that the Loan is not satisfied within 90 days of the Target Maturity date of the Loan, the Loan Interest Rate will convert to a new rate (the "Revised Loan Interest Rate") and the Loan may be subject to a 2% extension fee on the original Loan principal.

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*Revised Loan Interest Rate* The Revised Loan Interest Rate shall be a fixed rate equal to the greater of (i) the Loan Interest Rate plus 200 basis points or (ii) 500 basis points in excess of the yield on a comparable US Treasury security having a term equal to the remaining term of the Loan.

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*Debt Defeasance* The Loan shall provide for defeasance at any time after closing.

25 Under defeasance, the Borrower must post risk-free collateral (the form acceptable to the Lender) that will provide sufficient cash flow to make the remaining Loan interest payments and principal payments. In such case, the Lender will release its lien on the License Collateral; however, the debt shall remain outstanding, secured by the defeasance collateral.

The Borrower shall pay all out-of-pocket costs of Lender, including reasonable legal fees, incurred in connection with the defeasance plus a processing fee payable to the Servicer of .25% on the outstanding principal balance at the date of defeasance. On each payment date Credit Corporation 200 shall calculate the amount of collateral required for defeasance. Should the Loan Reserve balances be greater than or equal to the amount calculated, the Loan shall self-defease.

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*Assignment* The Loan and Management Agreement may provide for assignment on terms and conditions mutually acceptable to Lender and Company.

*Servicing/Lockbox* The Servicing Company 210, acts as Servicer of the Loan and be responsible for the collection, allocation and audit of Loan payments. All License Income is directed to a lockbox account held in the name of the Borrower in the sole control and dominion of the Lender. On a quarterly basis, the License Income lockbox receipts will be disbursed to the Lender for required reimbursement for the Borrower's cost allocation as set forth herein and more fully in the Loan documents and debt service including Accelerated Principal Account payments and any other payments due under the Loan, the balance, if any, shall be released to the Borrower pursuant to the Management Agreement between Borrower and Company. Any funds held in the lockbox shall be invested in permitted investments.

*Lockbox Allocations* The Lender shall reimburse, on a first priority basis, the Borrower from amounts in the Lockbox for allocated costs in determining the Gross Margin. Such allocated costs should be established in a manner satisfactory to the Borrower and Lender, and may include foreign income tax obligations.

*Transaction Waterfall* Subject to final structuring and documentation of the Transaction, cash collections to the Lockbox are allocated on a priority basis to the Distribution Account, as follows:

- 1) Lockbox Allocations (withholding taxes and advertising costs)
- 2) Trustee fees
- 3) Reimbursement of credit enhancement draws (if applicable)
- 4) Credit enhancement premiums (if applicable)
- 5) Loan servicing fees
- 6) Loan interest payments
- 7) Loan principal payments
- 8) Minimum Accelerated Principal Payments (principal payments necessary to repay the Loan by the 10-year Expected Maturity)
- 9) Replenishment of Liquidity Reserve
- 10) Administration (Management) Fees (\$15,000 per quarter)
- 11) Excess Administration Fees (as defined herein)
- 12) Excess Accelerated Principal payments up to Maximum Accelerated Principal Payments (9.5% maximum amount, plus previous period shortfalls, to preserve an average life of no less than 5-years)

13) After application to the foregoing, it is contemplated that the Transaction and Transaction Waterfall shall provide for release of excess cash balances to the Manager.

*Subordinate Financing* Subordinate Financing of any kind is not be permitted upon the License Collateral.

*Transaction Documents* Loan documents (collectively, the “Transaction Documents”) should in form and substance be acceptable to the Lender and its counsel.

*Expenses* All costs and expenses of the Lender in connection with the underwriting, closing, securitization, administration and enforcement of the Loan including, without limitation, reasonable legal fees, reasonable Lender underwriting fees, trustee fees, ratings agency fees and the reasonable fees of any asset valuation expert and apparel industry consultant who may be hired by the Lender at its discretion to review the License Collateral shall be reimbursable and/or payable by the Borrower, upon demand by Lender.

*Representations & Warranties* Standard, as customary for transactions of this scope and nature.

*Indemnification* Standard, as customary for transactions of this scope and nature.

*Events of Defaults* Standard, as customary for transactions of this scope and nature.

All monetary defaults are curable for 10 days after the Lender has notified the Borrower. All non-monetary defaults are curable for 30 days after the Lender has notified the Borrower or for 60 days if the Borrower is diligently attempting to cure the default.

*Conditions Precedent to Funding* All of the following must be provided to the satisfaction of the Lender:

- 1) Asset valuation report of the Collateral prepared by a Lender-approved asset valuation specialist;
- 2) Industry consultant’s due diligence report prepared by a Lender-approved apparel industry consultant;
- 3) Five years of audited royalty income, including any explanation of extraordinary revenue and expense items;
- 4) Evidence of a 30-month, viable business plan, restructuring plan and turnaround strategy for the Company;
- 5) Evidence of funding of \$2.5 million of equity capital in the Manager from Loan Proceeds;
- 6) Evidence of all necessary consents from creditors, releasing all liens and/or claims on the Collateral and recognizing Credit Corporation’s security interest;

- 7) A rating of the transaction of “BBB” or better from Fitch IBCA and equivalent from Moody’s Investors Service, without regard to any credit enhancements, as allowed herein;
- 8) Copy of management/administration agreement(s) for the Collateral; and
- 9) Such other documents, agreements and statements as may be customary for transactions of this scope and nature, and reasonably requested by the Lender.

*Security Interest:*

- 1) UCC-1 financing statements for all of the License Collateral;
- 2) A first security interest in and any assignment of any accounts receivable due to the Borrower and first security interest in material trademarks;
- 3) A general assignment of all related License Income due to the Borrower;
- 4) A first priority perfected security interest in a general assignment of all related licenses and contracts of the Borrower; and
- 5) Such other documents as Lender’s counsel deems necessary to secure the Loan.

*Break Up Fee* The provisions of the Engagement Letter pertaining to the Break Up Fee shall be hereby modified as follows:

1. The condition set forth in subparagraph (c) of paragraph 7 of the Engagement Letter shall be modified to include the additional requirement that the applicable interest rate on the Loan (which applicable Interest Rate, in turn, depends on the rating of the securities) shall, in aggregate, be no higher than the estimated coupon indicated in the attached Projected Interest Rate Range; under no circumstances shall the Break Up Fee be payable if such cost components of the applicable Interest Rate shall, in the aggregate, be higher.
2. The condition set forth in subparagraph (e) of paragraph 7 of the Engagement Letter shall be modified to permit the financial qualifications specifically identified above in clauses (i) through (iv) under the heading “Management Agreement & Manager Qualifications” and the qualifications specifically identified above in clauses (i) and (iii) under the heading “Master License”; under no circumstances shall the Break Up Fee be payable if the documentation for the transaction shall contain any other financial covenants

or qualifications (whether or not deemed necessary by Lender and whether or not market rate).

3. The condition set forth in subparagraph (h) of paragraph 7 of the Engagement Letter shall require that prior to the termination of the engagement, Credit Corporation 200 must have bona fide investors that have committed to fund the Securitization and Credit Corporation and the investors must have satisfied or waived any and all contingencies with respect to internal credit approvals, syndication, underwriting or other conditions precedent to funding), on terms and conditions conforming with the Engagement Letter and this Preliminary Transaction Structure (and Updated Summary of Terms and Conditions).
4. A new condition, subparagraph (i), shall be added which shall require the Lender to waive the Qualified Master Licensee qualification requirements for the first 30 months of the transaction; under no circumstances shall the Break Up Fee be payable if such waiver has not been obtained.

The Break Up Fee accrues and is payable only in the event a rated Securitization is tendered by Credit Corporation and conditions (a) through (i) specified in paragraph 7 of the Engagement Letter, as modified above, are fully satisfied but the Company nonetheless elects not to proceed with the Securitization.

Typically, XYZ, on behalf of the to-be-formed Borrower, will authorize Lender to begin incurring due diligence costs and to retain outside counsel to prepare loan documents and otherwise prepare for closing, and Company, on behalf of the to-be-formed Borrower, will agree to pay for all costs, fees and expenses incurred in connection therewith unless paid out of the Deposit, whether the Loan is funded or not. If the Loan is funded, all such expenses incurred through the date of funding shall be paid at the time of the initial disbursement of loan proceeds. Subject to the provisions of an engagement letter and the term sheet with respect to the Break Up Fee, if payable, if the Loan is not funded for any reason, including but not limited to failure of Company to secure corporate and other approvals with respect to the Loan or any of the other transactions contemplated herein, the only liability of Company hereunder or under the Engagement Letter shall include such costs, fees and expenses described above.

### Projected Interest Rate Range

Following is a table that shows an example of Creditor Company's estimate for the transaction's fixed-rate coupon. The coupon will be set immediately prior to closing and will take into account the cost components indicated below.

Cost Components	"AAA" Best Case Estimate	"A" Case Estimate	"BBB" Worst Cast Estimate
Treasury Benchmark	6.60%	6.60%	6.60%
Investor Spread	1.25%	2.25%	3.50%
Credit Enhancement Premiums	0.75%	0.35%	0.00%
Loan Servicing Costs	1.00%	1.00%	1.00%
<b>Estimated Coupon</b>	<b>9.60%</b>	<b>10.20%</b>	<b>11.10%</b>

### Estimated Debt Service

The following table reflects the terms described herein and assumes a Loan Interest Rate of 11.10%.

Total Transaction		Average Live 6-16 years					Mgmt. or CC ("0"/"1") Case		I		
Deal Year	Ending Principal Balance	Unwritten Collateral Cash Flow (Less taxes)	Principal Paid from Cash, Reserves & Wrap	Interest From Cash, Reserves & Wrap	Minimum Passforward Applied to Principal	Minimum Management Fee	Maximum Passforward Applied to Principal	Insurance Claims	Total Debt Service (excluding Prepayment from Reserve)	Excess Management Fee	Total Management Fees
0	85,000,000	13,807,200									
1	79,967,899	15,179,120	1,208,135	9,256,899	3,156,892	981,450	667,073	-	14,288,999	-	981,450
2	74,417,180	15,179,120	1,243,322	8,678,025	3,619,026	1,063,413	688,371	-	14,228,744	-	1,063,413
3	68,138,160	15,762,331	1,265,846	8,039,590	4,142,350	1,560,842	870,624	-	14,318,611	-	1,560,842
4	61,066,543	16,343,541	1,267,260	7,315,027	4,797,227	2,041,532	1,017,131	-	14,356,645	52,055	2,093,587
5	53,513,196	16,343,541	1,240,860	6,501,271	5,471,360	2,102,596	871,127	-	14,084,618	224,146	2,326,742
6	45,291,174	16,343,541	1,183,653	5,620,812	6,268,375	2,137,601	769,994	-	13,842,835	423,014	2,560,614
7	36,393,281	16,343,541	1,085,789	4,665,921	7,163,217	2,176,902	648,887	-	13,563,814	653,399	2,830,301
8	26,964,982	16,343,541	939,135	3,645,885	8,154,904	2,223,193	334,261	-	13,074,185	1,086,682	3,109,875
9	17,000,187	16,345,541	738,632	2,586,083	9,226,163	2,223,193	-	-	12,550,878	1,680,817	3,904,010
10	-	8,646,679	1,194,315	870,425	5,056,872	1,185,835	-	-	17,870,612	1,686,120	2,871,955
11	-	-	-	-	-	-	-	-	-	-	-
12	-	-	-	-	-	-	-	-	-	-	-
13	-	-	-	-	-	-	-	-	-	-	-
14	-	-	-	-	-	-	-	-	-	-	-
15	-	-	-	-	-	-	-	-	-	-	-

5

16								
17								
18								
19								
20								

10

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35

Total Transaction (con't)									
Deal Year	Ending Principal Balance	Underwritten Collateral Cash Flow (Less taxes)	Manager Required Debt Service	Manager Trigger DSCR	Default Required Debt Service	Default DSCR	Liq. Reserve Balance	Liquidity	Net Debt
0	85,000,000	13,807,200	10,624,331	1.30x	10,624,331	1.30x	8,500,000	10.0%	76,500,000
1	79,967,899	15,179,120	10,465,034	1.45x	10,465,034	1.45x	8,802,319	11.0%	71,165,580
2	74,417,180	15,179,120	9,921,347	1.53x	9,921,347	1.53x	9,115,391	12.2%	65,301,789
3	68,138,166	15,762,331	13,447,986	1.17x	9,305,437	1.69x	9,439,597	13.9%	58,698,562
4	61,096,543	16,343,541	13,339,514	1.23x	8,582,287	1.90x	9,775,335	16.0%	51,321,208
5	53,513,196	16,343,541	13,213,491	1.24x	7,742,131	2.11x	10,123,014	18.9%	43,390,182
6	45,291,174	16,343,541	13,072,841	1.25x	6,804,466	2.40x	10,483,059	23.1%	34,808,115
7	36,393,281	16,343,541	12,914,928	1.27x	5,751,710	2.84x	10,855,969	29.8%	25,537,372
8	26,964,982	16,343,541	12,739,924	1.28x	4,585,020	3.56x	11,242,021	41.7%	15,722,961
9	17,000,187	16,343,541	12,550,878	1.30x	3,324,715	4.92x	11,641,865	68.4%	5,338,322
10	-	8,646,679	6,197,123	1.40x	1,140,251	7.58x	-	-	-
11	-	-	-	n/a	-	n/a	-	-	-
12	-	-	-	n/a	-	n/a	-	-	-
13	-	-	-	n/a	-	n/a	-	-	-
14	-	-	-	n/a	-	n/a	-	-	-
15	-	-	-	n/a	-	n/a	-	-	-
16	-	-	-	n/a	-	n/a	-	-	-
17	-	-	-	n/a	-	n/a	-	-	-
18	-	-	-	n/a	-	n/a	-	-	-
19	-	-	-	n/a	-	n/a	-	-	-
20	-	-	-	n/a	-	n/a	-	-	-

### III. The System

Fig. 4 is an illustration of main central processing unit for implementing computer processing in accordance with one embodiment of the present invention. In Fig. 4 computer system 218 includes central processing unit 234 having disk various drives. Typically, these may include a floppy disk drive 262. As illustrated, data bus 248 serves as the main information highway interconnecting the other components of the computer system. CPU 250 is the central processing unit of the system performing calculations and logic operations required to execute any programs. Read-only memory 252 and random access memory 254 constitute the main memory of the computer, and may be used to store simulation data. Disk controller 256 interfaces one or more disk drives to the system bus 248. These disk drives may be floppy disk drives such as 262, internal or external hard drives such as 260, or CD ROM or DVD drives such as 258. A display interface operates a display 240 and



permits information from the bus 248 to be displayed. Communications with the external devices can occur on communications port 266. It will be appreciated that in a preferred embodiment the computer system 218 may have access to the Internet.

In a preferred embodiment, the system of the present invention provides for the securitization of the future cash flows from licensing the intangible assets in the following manner. Computer programs implemented pursuant to the discussion in Section I above provide means for predicting the licensing revenues or cash flows and the purchase by the Borrower 130 of the requisite rights. The computer system in a preferred embodiment has the ability to employ both historical and prospective third party data and data unique to the underlying intangible asset, as well as consideration of a variety of other complementary variables, including, likely business cycles, how well the asset and similar assets are performing nationally and internationally, and a host of other factors to predict likely receipts or cash flows and to make adjustments on such predictions on a periodic basis.

Once implemented, and in the course of ongoing use as licensing revenues are actually collected, the system of the invention computes the requisite loan payments. From the standpoint of the Lender 220, the system ensures that investors are paid on a rolling basis to satisfy their interest and/or principal payment requirements. The disclosed system provides a means in which the operating business entity receives enough cash flow to maintain its operations at least on a short term basis, but also allows for investors to be paid first. In a preferred embodiment, the cash flow is used to re-finance corporate debt having higher interest rates. To the extent the required investor payments exceed receipts for a given period, the system is provided with the optional ability to automatically allocate past unused receipts to cover such shortfalls and adjusts future cash flow predictions.

Using the relevant cash flows, the system of this invention provides the means to create a portfolio of asset-backed securities. The asset-backed securities may be sold by one or more special purpose entities that will become the obligors of the securities. The operation of the system may preferably incorporate the services of a liquidity and credit enhancer to improve the ratings of the portfolios, provide access to the commercial paper market, add extra funding flexibility and thereby reduce the overall cost of funds.

In different embodiments, the system of this invention and, in turn, the special purpose entities may make use of a variety of securitized financial instruments. By means of example, the most common are commercial paper and short to medium term notes. To gain access to the commercial paper market, the system in one embodiment of the present invention, provides the means to obtain through a commercial bank a liquidity capable of promptly retiring the short term maturing commercial paper. Further, to facilitate the

requisite credit rating that creates a steady demand from the commercial paper market, the system, as an unknown sponsor of a securitized asset, may require a credit enhancement. Preferably, each special purpose entity used will have a clean balance sheet with no liabilities other than the collateralized security.

To facilitate the securitization process, the Lender may employ a securitization computer subsystem to manage the treasury functions and to automate most of the administration and accounting required for the special purpose vehicles. An important function of this system is to provide detailed information and reports to support the sale of marketable securities backed by the cash flows generated by, and the value of, the underlying receipts or cash flows. In addition, this system provides for special purpose vehicle financial management, credit enhancement, and liquidity monitoring facilities. In one embodiment, the Lender computer system may utilize a securitization management system of the type developed by Deloitte & Touche of Wilton, Conn., which, in one embodiment, is the Financial Administration and Structuring Technology (FAST). FAST is an integrated issuing entity origination and management software package, which addresses the financial and operational aspects of creating and managing an asset securitization entity and can be operated on a PC local area network. It can be used to track trading activities, forecasting functions, accounting entries, and management information systems to support pricing and other management decisions. In a preferred embodiment, the system can be modified and customized to streamline the analysis and administration functions for the program features that are unique to the present invention.

#### **IV. Examples**

Attached as Appendix A is a draft underwriting memorandum explaining in detail certain aspects of the system and method of this invention in a real-case scenario. The inventor has no objection to the use of the material in Appendix A as a reference, but retains any and all copyrights in the disclosure whatsoever.

While the invention has been described by recitation of its various aspects/features and illustrative embodiments thereof, those skilled in the art will recognize that alternative elements and techniques, and/or combinations and sub-combinations of the described elements and techniques, can be substituted for, or added to, those described herein. The present invention, therefore, should not be limited to, or defined by, the specific structures, apparatuses, methods, and articles-of-manufacture described herein, but rather by the appended claims, which are intended to be construed in accordance with well-settled principles of claim construction.